



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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ELIZABETH MAHER MUOIO
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JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

November 15, 2024

Sent via email to: [REDACTED]

OXFELD COHEN, PC
Samuel B. Wenocur, Esq.

[REDACTED]

RE: Shu Zhang
TPAF #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Wenocur:

At its meeting on October 10, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's July 11, 2024 determination that Shu Zhang is not eligible to purchase service credit based on her employment with Hillsborough Township (Hillsborough) for the period covering October 1, 2013 to June 30, 2015 for the reasons set forth in the Board's determination letter, dated July 19, 2024. You filed a timely appeal of the Board's decision on August 22, 2024.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of November 14, 2024.

FINDINGS OF FACT

The record before the Board establishes that Ms. Zhang began working for Hillsborough during the 2012-2013 school year as a Chinese language teacher under a temporary work permit, which is the F-1 student visa called Optional Practice Training (OPT). F-1 visas are for full time

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international students pursuing academic studies that result in a degree, diploma, or certificate. Students and Employment, <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment> (last visited November 15, 2024). F1 visa holders are exempt from Social Security tax on wages. Foreign student liability for Social Security and Medicare taxes, <https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes#:~:text=Generally%2C%20foreign%20students%20in%20F,Social%20Security%20and%20Medicare%20taxes.> (last visited November 15, 2024).

In or about December 2012, Ms. Zhang, with the assistance of Hillsborough, applied for the H-1B visa. The H-1B visa allows United States employers to employ foreign workers in specialty occupations. H1B Program, <https://www.dol.gov/agencies/whd/immigration/h1b> (last visited November 15, 2024). H-1B visa holders are required to pay Social Security taxes. Taxation of alien individuals by immigration status – H-1b, <https://www.irs.gov/individuals/taxation-of-alien-individuals-by-immigration-status-h-1b#:~:text=An%20H1%20DB%20alien%20who%20is%20paid%20wages%20in%20exchange,e%20employment%20that%20under%20U.S.%20law> (last visited November 15, 2024). In April 2013, Ms. Zhang and Hillsborough were notified of her status change from OPT to H-1B, effective October 1, 2013 through June 30, 2014. Ms. Zhang continued to work at Hillsborough as a Chinese language teacher for the 2013-2014 school year. Prior to the expiration of her H-1B visa, Hillsborough assisted Ms. Zhang with filing an extension. On or about May 15, 2014, Hillsborough notified Ms. Zhang that the extension of her H-1B visa was approved for the period covering July 1, 2014 through June 30, 2017.

On September 8, 2015, Hillsborough submitted an enrollment application on Ms. Zhang's behalf through the Division of Pensions and Benefit's (Division) Employer Pensions and Benefits

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Information Connection (EPIC), and as a result, Ms. Zhang was enrolled in the TPAF effective September 1, 2015.

On June 21, 2021, the Division denied Ms. Zhang's request to purchase service credit from July 1, 2012 through June 30, 2015 explaining that Social Security coverage is a prerequisite to participation in the TPAF. Ms. Zhang did not pay into Social Security and accordingly did not receive Social Security credit for the 2013-2014 or 2014-2015 school years. A few years later, in or around February 2024, she contacted the Social Security Administration (SSA) to inquire about purchasing Social Security credits for the 2013-2014 and 2014-2015 school years. The SSA informed Ms. Zhang that there was no mechanism for her to purchase those years even if she should have been eligible for Social Security credits.

On April 9, 2024, you appealed the Division's denial of Ms. Zhang's request to purchase service credit. On April 17, 2024, the Division determined that Ms. Zhang was not eligible to purchase service credit from July 1, 2012 through June 30, 2015 pursuant to N.J.A.C. 17:3-2.1(a)(2) which requires the position to be covered by Social Security.

On April 23, 2024, you appealed the Division's April 17, 2024 denial to the Board. At its meeting of July 11, 2024, the Board denied Mr. Zhang's request to purchase service credit based on her employment with Hillsborough for the period covering October 1, 2013 to June 30, 2015¹ for the reasons set forth in the Division's determination letter, dated April 17, 2024.

On August 22, 2024, you filed an appeal of the Board's denial of Ms. Zhang's request to purchase the aforementioned period. In your appeal, you assert that (1) Ms. Zhang was eligible to enroll under the controlling statute, N.J.S.A. 18A:66-2, (2) the TPAF's interpretation of N.J.A.C.17:3-2.1 and N.J.A.C. 17:3-5.8 supersedes the statutory authority of N.J.S.A. 18A:66-2,

¹ The Board determination letter dated July 19, 2024, incorrectly stated that Ms. Zhang requested to purchase service credit for the period covering July 1, 2012 to June 3, 2015.

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(3) the Board incorrectly interpreted N.J.A.C. 17:3-2.1 and N.J.A.C. 17:3-5.8, and (4) the Board must allow Ms. Zhang the opportunity to purchase service credit for her work during the 2013-2014 and 2014-2015 school years.

At its meeting of October 10, 2024, the Board considered your appeal of its determination that Ms. Zhang is not eligible to purchase service credit based on her employment with Hillsborough from October 1, 2013 to June 30, 2015. The Board found that because there is no mechanism for Ms. Zhang to retroactively pay into Social Security for the 2013-2014 and 2014-2015 school years she is not eligible to receive credit for, or purchase, that period.

Accordingly, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of November 14, 2024.

CONCLUSIONS OF LAW

The issue before the Board is whether Ms. Zhang is eligible to receive service credit for, or purchase service credit from October 1, 2013 through June 30, 2015. N.J.A.C. 17:3-2.1(a)(2) states:

(a) Any person appointed by the State, local board of education, or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2.p or as a regular, full-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment:

...
2. The position is covered by Social Security; and
...

[Ibid.]

N.J.A.C. 17:3-5.8(a)(6) states:

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(a) A member will not be granted, nor may a member purchase, prior service or membership credit, including, but not limited to, the following situations:

...

6. Any public service that was not eligible for either compulsory or optional enrollment in a State-administered retirement system at the time the service was rendered.

[Ibid.]

Pursuant to N.J.S.A. 43:22-3, the State entered into a Section 218 agreement with the SSA. A Section 218 Agreement is an agreement between the SSA and the State to extend the Social Security Insurance system to “services performed by individuals as employees of such State or any political subdivision thereof.” 42 U.S.C. 418(a)(1). Section 218 Agreements “shall exclude . . . service . . . which is excluded from employment by any provision of section 210(a) [42 U.S.C. 410(a)].” 42 U.S.C. 418(a)(6)(D). Under 42 U.S.C. 410(a)(19) employment shall not include:

service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under **subparagraph (F), (J), (M), or (Q) of section 101(a)(15)** of the Immigration and Nationality Act, as amended [8 USCS § 1101(a)(15)(F), (J), (M), or (Q)], and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) [8 USCS § 1101(a)(15)(F), (J), (M), or (Q)], as the case may be[.]

[emphasis added].

Thus, according to 42 U.S.C. 418(a)(6)(D) and 42 U.S.C. 410(a)(19), employment from an individual with an F-1 visa is not covered under Section 218 Agreements. By extension, that means that while an individual with an F-1 visa is employed in a position with the State, that position cannot be covered by Social Security (through the Section 218 Agreement).

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Here, Ms. Zhang's employment with Hillsborough from October 1, 2013 through June 30, 2015 was through an F-1 visa. As a result, her employment was not covered by the State's Section 218 Agreement with SSA. Because the position was not covered through the Section 218 Agreement, the position was not covered under Social Security as required by N.J.A.C. 17:3-2.1(a)(2). Accordingly, Ms. Zhang is not eligible for service credit or the purchase of service credit from October 1, 2013 through June 30, 2015.

As noted above, the Board has considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the TPAF enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

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C: S. Scott (ET)

Shu Zhang